EDMUND G. BROWN JR. Attorney General of California LINDA K. SCHNEIDER 2 Supervising Deputy Attorney General 3 MARICHELLE S. TAHIMIC Deputy Attorney General 4 State Bar No. 147392 110 West "A" Street, Suite 1100 San Diego, CA 92101 5 P.O. Box 85266 6 San Diego, CA 92186-5266 Telephone: (619) 645-3154 7 Facsimile: (619) 645-2061 Attorneys for Complainant 8 BEFORE THE 9 BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS 10 STATE OF CALIFORNIA Case No. 2010 - 418 11 In the Matter of the Accusation Against: 12 DEBORAH CARR, RN 1527 First Street, Apt. U108 13 San Diego, CA 92118 ACCUSATION 14 Registered Nurse License No. 551553 15 Respondent. 16 17 Complainant alleges: 18 **PARTIES** Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her 19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department 20 of Consumer Affairs. 21 On or about February 2, 1999, the Board of Registered Nursing issued Registered 22 2. Nurse License Number 551553 to Deborah Carr, RN (Respondent). The Registered Nurse license 23 was in full force and effect at all times relevant to the charges brought herein and will expire on 24 February 28, 2011, unless renewed. 25 26 111 27 111 28 ///

Accusation

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

- 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS AND REGULATIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- n...
- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.
 - 11.
 - 7. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the

public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of conviction is conclusive evidence thereof....

8. Section 2765 provides:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare....

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12. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- "(a) Considering the denial of a license by the board under Section 480; or
- "(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

- 13. Title 16, California Code of Regulations section 1445, subdivision (b), provides the following criteria for evaluating the rehabilitation of a licensee as follows:
 - (b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:
 - (1) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.
 - (3) The time that has elapsed since commission of the act(s) or offense(s).
 - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(December 5, 2002 Conviction of DUI on July 6, 2002)

15. Respondent is subject to disciplinary action under Code sections 490 and 2761(f) for conviction of a crime that is substantially related to the qualifications, functions and duties of a registered nurse in that on December 5, 2002 in *The People of the State of California v. Deborah*

Carr, San Diego Superior Court Case No. M870056, Respondent was convicted on her plea of nolo contendere of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater, a violation of Vehicle Code section 23152(b).

16. As a result of her conviction, Respondent was sentenced to 180 days in custody, sentence suspended for 5 years, required to pay fines and fees of \$1,373, required to attend and complete a MADD program and had her driving privilege restricted for 90 days.

SECOND CAUSE FOR DISCIPLINE

(July 12, 2007 Conviction of DUI on March 10, 2007)

- Respondent is subject to disciplinary action under Code sections 490 and 2761(f) for conviction of a crime that is substantially related to the qualifications, functions and duties of a registered nurse in that on July 12, 2007 in The People of the State of California v. Deborah Carr, San Diego Superior Court Case No. M016363, Respondent was convicted on her plea of nolo contendere of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater, a violation of Vehicle Code section 23152(b). The circumstances are as follows.
- On March 10, 2007, Officer L. of the San Diego Police Department responded to a call of a female driver whose vehicle was stuck on railroad tracks on Harbor Drive. When he arrived, Officer C. was at the scene and a silver Honda Civic was on the train tracks with one wheel elevated between the tracks and the right front wheel buried in the gravel. The officers were unable to remove the vehicle from the tracks. When Officer L. made contact with Respondent to ask how her vehicle got stuck on the tracks, Officer L. detected the odor of alcohol from Respondent. She admitted to having consumed two beers. Respondent fell after she was directed to walk to the front of Officer C.'s vehicle. She failed field sobriety tests. Respondent consented to a blood test, which resulted in a blood alcohol content of 0.21%.
- 19. As a result of her conviction, Respondent was placed on probation for 5 years, ordered to serve 96 hours in custody, ordered to participate in a public service work program for 10 days and required to pay \$2,162 in fines and fees.

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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct on March 10, 2007)

20. Respondent is subject to disciplinary action under Code section 2761(a) for unprofessional conduct in that on March 10, 2007 Respondent drove her vehicle over train tracks while under the influence of alcohol and was unable to remove her vehicle from the tracks as more fully set forth in the Second Cause for Discipline and incorporated by this reference as though set forth in full herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Use of Alcoholic Beverage in a Dangerous Manner)

21. Respondent is subject to disciplinary action under Code section 2762(b) for unprofessional conduct in that on March 10, 2007 Respondent used an alcoholic beverage to an extent or in a manner that was dangerous or injurious to herself or the public when she drove her vehicle over train tracks while under the influence of alcohol and was unable to remove her vehicle from the tracks, as more fully set forth in the Second Cause for Discipline and incorporated by this reference as though set forth in full herein. These acts caused a serious risk of harm to Respondent and members of the public and constitute unprofessional conduct.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Convictions Regarding Use of Alcoholic Beverage)

22. Respondent is subject to disciplinary action under Code section 2762(c) for unprofessional conduct in being convicted of criminal offenses involving the consumption of alcoholic beverages in that on December 5, 2002 in *The People of the State of California v. Deborah Carr*, San Diego Superior Court Case No. M870056 and on July 12, 2007 in *The People of the State of California v. Deborah Carr*, San Diego Superior Court Case No. M016363, Respondent was convicted of driving under the influence of alcohol with a blood alcohol content of greater than 0.08%.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision: